

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. FOSTER,	§	
	§	No. 661, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0703031898
Appellee.	§	

Submitted: November 24, 2009

Decided: December 4, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of December 2009, upon consideration of the appellant's response to the notice to show cause, the appellee's answer to the appellant's response to the notice to show cause, and the appellant's motion for appointment of counsel, it appears to the Court that:

(1) On November 10, 2009, the appellant, John E. Foster, filed a notice of appeal from a Superior Court commissioner's October 1, 2009 report recommending that Foster's motion for postconviction relief should be denied. Upon receipt of the notice of appeal, the Clerk issued a notice directing that Foster show cause why the appeal should not be dismissed pursuant to Supreme Court

Rule 29(b) for this Court's lack of jurisdiction to consider an appeal directly from a commissioner's report and recommendation.¹

(2) In his response (and numerous supplemental responses) to the notice to show cause, Foster maintains that the Court should entertain his appeal. Foster does not, however, address the jurisdictional issue raised in the notice to show cause.

(3) The Court's appellate jurisdiction is limited to decisions issued by judges of a court.² The Court does not have the authority to hear an appeal directly from a report and recommendation of a Superior Court commissioner without intermediate review by a Superior Court judge.³

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED. The motion for appointment of counsel is MOOT.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹ *Johnson v. State*, 884 A.2d 475, 479 (Del. 2005).

² *Id.*

³ *Id.* See also *Cleveland v. State*, 2009 WL 1579000 (Del. Supr.) (dismissing appeal from commissioner's order as an "impermissible interlocutory appeal in a criminal case"); *Wilmer v. State*, 2009 WL 696400 (Del. Supr.) (dismissing appeal from commissioner's report recommending that appellant's motion for postconviction relief should be denied). In this case, it appears that Foster filed objections to the commissioner's report and recommendation, and that those objections are pending before a Superior Court judge.